Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
International Settlement Rates	)	IB Docket No. 96-261
	)	
	)	
	)	

REPLY OF SPRINT

Sprint Communications Company, L.P. (``Sprint'') respectfully submits its reply comments in the above-captioned proceeding. Sprint disagrees with three recurring arguments in many of the comments. These arguments can be summed up as follows: first, that the Commission should not establish accounting rate benchmarks to which U.S. carriers must adhere; second, that the Commission cannot legally establish such benchmarks; and third, that call-back and refiling of traffic are responsible for the large and increasing U.S. settlement outpayment.

Many commenters, especially foreign carriers, argue that the process of moving accounting rates towards cost is one that should occur in a multilateral forum such as the International Telecommunications Union (ITU).[1]

[1] *See, e.g.*, Comments of International Telecom Japan, Inc. at 6; Comments of SBC Communications Inc. at 4; Comments of Singapore Telecommunications Limited at 2; Comments of Videsh Sanchar Nigam Limited (VSNL) at 6.

The ITU has recently begun an accelerated effort to address how the current accounting rate system should change to cope with a world where private sector competition is beginning to supplant traditional bilateral provision of telecommunications. The Secretary General of the ITU has already released a Consultation Document on Accounting Rate Reform seeking advice on how to improve the compatibility of the accounting rate system with a competitive market environment.[2]

The Secretary General has also convened an informal expert group on international settlements which began meeting in Geneva on March 24-27, 1997 to examine possible reforms of the current accounting rate system. The Commission is a member of this group. Judging from the documents which the Secretary General has already released on this subject, the ITU seems to be in substantial agreement with the FCC that the current system must be changed, and quickly.[3] Sprint therefore sees no reason why the Commission cannot proceed in its effort to achieve cost-

[2] ITU Telecomunication Standardization Sector Study Group 3, Geneva, 11-1 November 1996. There, the Secretary General stated that ''While accounting rates have been coming down over time, by some 3 per cent per year on average since 1988, available evidence suggests that they are still well above costs.'' *Id.* at 3.

[3] *See, e.g.*, 24 February 1997 letter from Pekka Tarjanne, Secretary General, ITU, to Tom Wasilewski, FCC at 1 (''I have on several occasions indicated that, if the current system is not changed or adapted to the emerging competitive environment, it will rapidly be bypassed by alternate arrangements, which may not always be in the best interests of all concerned.'')

based settlement rates simultaneously with the ITU's efforts. Indeed, the two efforts may complement each other.

Other commenters argue the FCC only has jurisdiction to regulate the settlement rates that U.S. carriers charge foreign carriers to terminate international switched traffic.[4] These commenters misapprehend the Commission's jurisdiction.

Several commenters assume that by establishing benchmarks that bind U.S. carriers, the Commission is impermissibly exercising jurisdiction over foreign carriers. But, as Sprint pointed out in its comments, however, it is well established that the FCC has plenary jurisdiction to declare that a U.S. carrier's contract with another carrier is not in the public interest. *MCI* v. *FCC*, 665 F.2d 1300 (D.C. Cir. 1981).

Section 201(b) of Title II governing common carriers, provides, in part, that

> ...nothing in this Act or in any other provision of law shall be construed to prevent a common carrier subject to this Act from entering into or operating under any contract with any common carrier not subject to this Act, for the exchange of their services, if the Commission is of the opinion that such contract is not contrary to the public interest;

A contract between a U.S. carrier and its foreign correspondent which is not subject to the Act falls directly

[4] *See, e.g.*, Comments of Kokusai Denshin Denwa (KDD) at 4 (''FCC does not have jurisdiction to tell other countries what settlement rates their carriers may charge for terminating U.S. originating traffic, just as foreign regulatory authorities lack jurisdiction to tell U.S.

within the ambit of Section 201(b). That the Commission's exercise of jurisdiction over a U.S. carrier's contracts with foreign carriers might affect a foreign carrier adversely does not mean that the Commission is exercising jurisdiction over that foreign carrier. That is the holding of *R.C.A. Communications* v. *United States*, 43 F.Supp. 851 (S.D.N.Y. 1942).

The Commission, in prescribing a settlement rate, is not setting a foreign carrier's rates; such a prescription could only affect the amount which U.S. carriers could pay to foreign carriers or the amounts which U.S. carriers could accept from foreign carriers. This is perfectly consistent with the Commission's long-standing position that it does not have jurisdiction over foreign countries or foreign carriers.

The Commission does not need jurisdiction over foreign carriers or similar unregulated entities in order to ensure the justness and reasonableness of U.S. carriers' accounting rates. Under the rate base regulation scheme the Commission previously used to regulate AT&T, the Commission ensured that AT&T did not pay excessively for goods it purchased from its Western Electric affiliate without exercising jurisdiction over the latter. It did so by exercising its jurisdiction solely over AT&T, the regulated carrier. Thus, the Commission made very clear that

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carriers what settlement rates they may charge for terminating foreign-billed traffic.'')

> We shall in the future consider disallowance from AT&T's interstate rate base the relevant portions of any excess earnings Western receives from sales to the Bell System . . . We shall also consider disallowances from AT&T's interstate rate base in future proceedings if price comparisons using competitive benchmarks show `overpayment' by AT&T for any equipment.

AT&T, (Docket No. 19129), 64 FCC 2d 1, 80 (1977). The Commission did not need jurisdiction over Western Electric to take this action. Similarly, the Commission does not need jurisdiction over the foreign carrier.

And in calculating how much U.S. carriers may pay or collect in accounting rates, it is, as the Commission pointed out in its decision in Docket No. 19129, appropriate for the Commission to utilize competitive benchmarks. The use of such a benchmark is not a prescription of a cost methodology that a foreign carrier must use. The foreign carrier may use any methodology or no methodology; a foreign government may decide to impose a larger proportion of the cost of their telecommunications policy objectives on international users.[5] That does not mean that the Commission must concur in this policy.

Several commenters maintain that under governing ITU Regulations, the only way in which accounting rates may be established and revised is by mutual agreement.[6] While Sprint agrees that the provision of international service

[5] *See, e.g.*, Comments of the Caribbean Association of National Telecommunications Organizations (CANTO) at 5.

and establishment of accounting rates should be pursuant to mutual agreement between U.S. carriers and their correspondents, this is not the same as saying that the Commission has given up its right to regulate agreements that the Commission finds contrary to the U.S. public interest.

The Commission does not negotiate accounting rate agreements and does not provide telecommunications services. Rather, it is U.S. carriers who provide service and who are parties to such agreements. It is therefore consistent with ITU regulations that U.S. carriers must establish accounting rates pursuant to agreements with their correspondents but that these agreements are subject to the FCC's oversight. ITU regulations explicitly recognize the sovereign right of each country to regulate its telecommunications. If the Commission cannot regulate the amounts which U.S. carriers pay their suppliers, including their foreign correspondents, then the U.S. would have given up its rights to regulate its telecommunications.

Many commenters blamed the increasing U.S. settlement outpayment on call-back and refile,[7] implying or stating

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[6] Comments of CANTO at 2; Comments of Hong Kong Telecom International at 21; Comments of International Telecom Japan, Inc. at 4; Comments of KDD at 21; Comments of Telekom Malaysia Berhad; Comments of VSNL at 3.

[7] *See, e.g.*, Comments of Deutsche Telekom at 7; Comments of the Solomon Islands Government at 2; Comments of the Commissioner of National Telecommunications Commission of the Republic of the Philippines (''Philippines'') at 17-18; Comments of Telecom Italia at 5-6; Comments of Telecom Vanuatu at 2-3; Comments of the Directorate General of Telecommunications, China at 2.

that the U.S. has only itself to blame for that deficit.[8] Even if true, these arguments are beside the point: the Commission's desire for accounting rates that are more closely related to costs transcends any particular result that such rates may have on the U.S. balance of trade for international communications services. As discussed further below, the benefits of cost-based accounting rates, such as sending the right pricing signals to an increasingly competitive international telecommunications marketplace, are important in and of themselves.

Arguments that call-back and refile are responsible for the current U.S. settlement outpayment also overlook the fact, pointed out by other commenters,[9] that cultural and economic factors cause U.S.-outbound traffic to exceed U.S.-inbound traffic on many routes. Even in the absence of arbitrage, the U.S. would still have a settlement deficit with many, if not most, countries. Arbitrage simply increases the nominal amount of that deficit. As such, the FCC still has a legitimate interest in seeking settlement rates that are closer to cost in order to minimize U.S. settlement outpayments.

The Commission, however, has an interest in furthering the establishment of cost-based settlement rates irrespective of particular traffic flows. All recognize

[8] *See, e.g.*, Comments of HKTI at 5.

that both competition and routing options for international traffic are increasing dramatically even if they do not like it or agree with it.[10] It is becoming increasingly difficult for individual carriers or governments to match specific minutes of traffic with country-specific pricing agreements.

Policing an outmoded and crumbling structure built upon monopolists negotiating with each other is likely to prove impossible as competition increases. Such activities are likely to consume scarce regulatory resources not only in the U.S. but in other countries as well. Under these circumstances, settlement rates that are based closer to costs will establish a sounder basis for international telecommunications in the future: traffic will flow based upon considerations of price, flexibility, reliability, and quality, the normal parameters around which competitive international businesses organize themselves. This is a legitimate objective for the Commission to pursue.

To assume, as some commenters seem to, that everything would be fine if the Commission only exercised its regulatory powers vigorously in order to prevent arbitrage is shortsighted. The international telecommunications marketplace is in Sprint's view irreversibly headed in the direction of greater choice and more competition. This in

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[9] *See, e.g.*, Comments of VSNL at 5; Comments of the Directorate General of Telecommunications of Taiwan at 2; Comments of the Republic of Panama at 33.

turn will force most accounting rates closer to costs, whether directly or indirectly. The only question is whether telecommunications providers will move in that direction only after a slow and painful transition, or whether they will recognize the inevitable and prepare for the new era.

Respectfully submitted,

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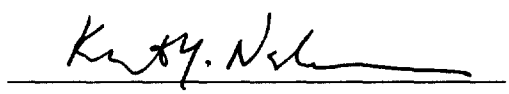
By: 

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[10] *See, e.g.*, Comments of the Philippines at 20.

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